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Newsroom

Reuters: Logan on Mass Litigation Surrounding BP Oil Spill

Dean David A. Logan talks to Reuters about the complexities surrounding Gulf oil spill litigation.

REUTERS: [*"For \\$20 bln BP claims fund, legal challenges loom"*](#) by Moira Herbst. Also distributed through [Reuters UK](#).



NEW YORK, April 20, 2011 (Reuters) - On the one-year anniversary of the Gulf oil spill, BP Plc is facing challenges to its effort to contain another potential disaster: mass litigation.

The oil giant last June established a \$20 billion compensation fund for victims such as shrimpers, fishermen and property owners, with certain incentives for those who agreed not to sue the company and partners.

In an interview, Kenneth Feinberg, who oversees the fund, said it is "working as intended." Some 280,500 claimants have applied for the final phase of the process, of whom roughly 126,500 have been paid for a total of about \$1.3 billion. Virtually all claims from an earlier, emergency phase have been resolved for a total of \$2.6 billion. "The sheer volume of claims processed demonstrates the success of the program, and the fact that almost \$4 billion has gone out in less than nine months," Feinberg said.

However, Feinberg is under attack from Mississippi Attorney General Jim Hood, other Gulf-state officials, victims' advocacy groups and plaintiffs' lawyers, who allege that he is distributing the money slowly and unfairly. Hood told Reuters that he is considering suing Feinberg for failing to turn over fund-related documents in response to a February subpoena seeking "unfettered access" to fund records.

Earlier this month, Hood filed a notice in New Orleans federal court seeking an independent, court-appointed audit of the fund, known as the Gulf Coast Claims Facility. Hood accuses Feinberg of delaying or denying awards to victims -- especially those who don't give up their rights to sue the company and its partners. So far, according to Reuters calculations of claims processed by the Gulf Coast Claims Facility, awards have been paid to approximately 17 percent of these so-called "interim" claimants, for a total of \$83.3 million. By comparison, awards have been paid to 67 percent of claimants who have signed away their rights to litigate, for a total of \$1.18 billion.

Hood argues that the fund is processing fewer interim claims and is instead "using its resources to extract releases from claimants" through what is known as the "Quick Pay" option. Under this option, individuals who received emergency money in the first phase are eligible to receive \$5,000, and businesses are eligible to receive \$25,000, in exchange for an agreement not to sue BP and its partners.

Feinberg disputed the idea that the claims facility is pushing claimants to take the Quick Pay option. "I categorically disagree with the proposition advanced by some that there is institutional favoritism in favor of Quick Pay," he said. "I have not heard the 110,000 people who took it complaining." He said many claimants chose the option because they feel adequately compensated or cannot document or prove any additional damage.

In a response to Hood's subpoena, Feinberg argued that further intervention would slow claims processing. The matter is currently before Judge Carl J. Barbier of the Eastern District of Louisiana. In February, Barbier brought the Gulf Coast Claims Facility under court supervision and ordered Feinberg to stop calling it "completely independent" of BP.



Legal experts say Barbier could potentially order changes to legal release forms signed by some claimants or call for an audit of the fund. "I wouldn't be surprised if (Barbier) is inclined to get even further involved if he is presented with additional examples of fundamental unfairness," said **David A. Logan, dean of Roger Williams University School of Law in Bristol, Rhode Island.**

'INCONSISTENCY IN RESULT'

Victims' advocacy groups say some claimants who suffered similar losses are not receiving the same treatment. "There is an inconsistency in result despite similar or identical fact situations," said John Jopling, an attorney for the Mississippi Center for Justice, a group receiving funding from the Gulf Coast Claims Facility to assist claimants who don't have lawyers.

Eddie Patingo, a ship fitter for Edison Chouest Offshore in Gulfport, Mississippi, said that in the wake of the oil spill, his average work week shrank from 52 hours to 40, and over the course of three months he lost \$8,800 in pay. He submitted a claim for emergency funding in September, which he said was denied. He submitted another claim in January and said he has not yet heard back. Patingo said he works alongside 200 people doing the same work and who faced similar losses, and estimates that 175 have been compensated and 25 have not. "We're all in the same situation and only some of us have been paid. How does that happen?" he asked.

Feinberg acknowledged in an April 19 news conference that there have been "too many" inconsistent claims awards, and that the fund is working to resolve that problem. "It rankles me when claimants say, 'I received x and my neighbor received x plus y; we were in the same job, location, et cetera,' he said. "There may be some very valid reasons for discrepancies, like documentation of the next-door neighbor. But we try to make right by the neighbor and fix the payment."

Fishermen and others operating on a cash basis complain they cannot produce the proof required to have a claim approved. "The document list the fund requires is in many instances nonsensical, and is clearly drawn up by people who don't understand the shrimping, oyster, or crab businesses," said Gerard Nolting, an attorney with Faegre & Benson LLP, who represents hundreds of clients submitting claims to the Gulf Coast Claims Facility, most of them Vietnamese-Americans. "They're asking for documents these people never generate or keep," such as profit-and-loss statements, Nolting said.

Feinberg said he is willing to talk with claimants and attorneys about how claimants can prove their lost profits or earnings, but he refuses to pay claims with no documentation.

Nolting said he is not yet prepared to assess Feinberg and the fund's work. "We think it's too early to be judging the fund; you don't review a movie after watching 15 minutes of it," he said. "The jury is out on the fund right now."

(Reporting by Moira Herbst; Editing by Amy Stevens)

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